

REMARKS

Claims 43-47 are pending. A Final Office Action mailed August 5, 2010 rejected Claims 43-47. The Final Office Action rejected Claims 43-47 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 43-47 were rejected under 35 U.S.C. § 103(a). By way of this Response, Applicant hereby traverses with respect to Claims 43-47.

Rejections under 35 U.S.C. § 112(1).

The Office Action rejected all claims under 35 U.S.C. § 112(1) and requested applicant “to point out from the original specification with reference numerals to show support for each and every claimed element in claims 43-47.” Applicant has amended claim 46 in order to more clearly identify the relevant support in the specification for the claim. Applicant further below identifies, for each and every claim element, at least one line and/ or figure in the original specification which provides support for each limitation:

Claim 43:

An apparatus attachable to a vacuum source (p 6 ln 20) for removing moisture (p 6 ln 15-17) from a building structure (p 6 ln 15), the apparatus comprising: a grid (p 14 ln 7) having a first plurality of members (p 14 ln 8) arranged in a first direction (p 7 ln 8-9) and a second plurality (p 14 ln 7-9) of similarly-shaped members (Fig 6D) arranged in a second direction (p 14 ln 8-9; Fig 5A – 5E; Fig 6C, 6D), the second plurality of members supported on the first plurality of member (Fig 6C) to form a three-dimensional lattice structure (p 14 ln 7-9; original claim 12; Fig 5A-5E; Fig 6C and 6D), the first direction different from the second direction (p 14 ln 8-9;

F5A – 5E; Fig 6C and 6D), the grid configurable to be placed on at least a portion of the building structure (p 25 ln 9-12); a tunnel-shaped plate (p 24 ln 22) supportable on a portion of the grid (Fig 5A – 5E), the plate having at least one vacuum attachment port (p 24 ln 23) to permit fluid communication between the building structure and a vacuum source (p 26 ln 22); and a flexible membrane (p 25 ln 2-3) placed over the grid and plate, the membrane extending past a periphery of the grid (p 26 ln 17; Fig 5D, 5E) and sealed (p 26 ln 19-21; Fig 5D, 5E) relative to the building structure and the at least one vacuum attachment port.

Claim 44:

The apparatus of claim 43, wherein the at least one vacuum attachment port includes a barbed nozzle (p 12 ln 6-7; p 25 ln 13-14).

Claim 45:

The apparatus of claim 43, wherein the flexible membrane includes a plastic sheet material (p 25 ln 2-3 and 14).

Claim 46 (currently amended):

The apparatus of claim 43, wherein the first and second plurality of members of the grid comprise generally parallel rows of strands. (p 23 ln 20-25; Fig 6C and 6D).

Claim 47:

The apparatus of claim 43, wherein the first direction is substantially non-parallel relative to the second direction (p 23 ln 22 – p 24 ln 2 and Fig 6C, 6D).

In view of the support in the original specification for each and every limitation of the claims, Applicant respectfully requests the rejection based on 35 U.S.C. § 112 be withdrawn.

Rejections under 35 U.S.C. § 103.

Prima Facie Obviousness

As a preliminary matter, the Examiner has not yet presented a prima facie case of obviousness, which is required in order to meet the standards for a § 103 rejection. Only then is the burden shifted to Applicant to provide evidence of non-obviousness. Specifically, the Examiner must point out what the references teach and show that the differences between the prior art and the claims are such that “as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103. In order to do this required analysis, the Examiner must show where each and every element of each claim is taught expressly or impliedly in the combined references, or obvious in view of them, and a logical explanation offered for how and why the references would be combined by a person having ordinary skill in the art to yield Applicant’s claims, without engaging in hindsight reconstruction by relying on Applicant’s Specification as a template combining the references. See MPEP 706.02(j) and MPEP 2142-2143.

In the subject application, there are multiple aspects of each of the independent claims that the Examiner has not addressed at all, as discussed below. Thus, the “factual findings” of the Examiner are incomplete or incorrect, and, accordingly, no prima facie case has been made.

In addition, the Examiner has not yet provided a prima facie case for combining Wenander and Creskoff with Ferrand, De Winter, or Rountree to achieve the subject matter claimed by Applicant. Specifically, there is no evidence in the prior art of a motivation to combine the references; neither is there any suggestion that, presented with these vastly disparate references from different fields that a person of ordinary skill would or could combine the individual aspects of them selected by Examiner in order to create Applicant’s invention. Wenander and Creskoff both are directed to modifying the chemical curing process of concrete when poured; Ferrand is directed towards receptacles for cultivating plants; De Winter concerns

preventing underwater soil erosion on the bottom or banks of water features; and Rountree addresses cotton harvesting. The Examiner proffers no reason why any person of ordinary skill in the further unrelated field of building remediation would ever even look to any one of these references. Even if a person of ordinary skill would consult these references, the Examiner has not explained how any of the cited patents could operate together. This does not meet the required standard of evidence. The case law is clear that Applicant's specification or claims cannot be used in hindsight as a template for combining references. See MPEP 2141 and 2141.01. Thus, even if the Examiner could show, which he has not, that each of the elements of Applicant's claims are taught by or obvious in view of the multiple references, he still has not demonstrated a prima facie case sufficient to shift the burden to Applicant to prove by submitting evidence that the subject matter of the claims is not obvious. Accordingly, Applicant invites the Examiner to address all of the language of the claims and to show why, without using Applicant's Specification, these references would even have been consulted in the first instance, and, if consulted, how it would have been known to combine the references as he has done and how they might operate together or be modified to achieve Applicant's claims.

Non-Analogous Art

To rely on a reference under 35 U.S.C. § 103, it must be analogous prior art. To be analogous art, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992); see also In re Deminski, 796 F.2d 436 (Fed. Cir. 1986) (same); In re Clay, 966 F.2d 656, 659 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to

an inventor's attention in considering his problem"); State Contracting & Eng'g Corp v. Condotte America, Inc., 346 F.3d 1057, 1069 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art but only if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

The application "relates generally to systems and devices for removing **unwanted** and **harmful** moisture from **wet and/ or water damaged structures**." P 1 ln 20-21. Such removal of harmful moisture from wet and water damages structures is a field that is utterly unrelated to the references cited by the Examiner. The Examiner has not even attempted to show that the subject matter of any cited reference is either (a) "reasonably pertinent" or, if not pertinent, (b) "even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." In re Clay, 966 F.2d at 659.

Rountree teaches a cotton harvester; Ferrand a receptacle for cultivating plants; De Winter teaches an underwater anti-erosion mat. Not only do none of these references teach essential elements of Applicant's claims, Examiner proffers no explanation for why a person of ordinary skill in the field of Applicant's invention – structural remediation by removing unwanted, harmful water from structures – would look to any aspect of the cotton harvesting, underwater erosion control, or plant cultivating arts as "reasonably pertinent" to solving the problems of water damaged structures. Indeed, an expert in the field of building remediation, Ken Larson, testifies by declaration that these fields of endeavor are not related to remediation, and are not areas towards which remediators look for guidance. Declaration of Ken Larson, ¶¶ 5-8.



Because each of Examiner's proposed rejections of claims 43-47 relies on at least one of these improperly selected patents, without any explanation of the pertinence (and, as noted above, without presenting a prima facie case for the combination), Applicant respectfully requests the withdrawal of all proposed rejections.

Further, neither Wenander nor Creskoff are properly identified as analogous to the subject of the present invention. Concrete is wet when it is created – indeed, concrete consists of a mixture of cement, aggregate, and water – and water is expelled during the chemical process of curing. See Larson Declaration ¶ 11-12. Both Wenander and Creskoff relate to methods of modifying the chemical reaction of curing concrete by adjusting the rate at which the water is expelled. Larson Dec. ¶ 12. They relate, in short, to the building **construction** industry, not to the building **remediation** industry. Examiner presents no evidence that a person of ordinary skill in building remediation would ever consider art from the construction trades as reasonably pertinent to working with completed buildings. And indeed, experts in the field who perform building remediation would not look to concrete construction for guidance. Larson Dec. ¶ 9-18. On this basis alone, these references are not analogous prior art, and all rejections based on them must be withdrawn.

The References Lack Essential Claim Elements

Moreover, the Examiner has not, and cannot, make out a prima facie case for combination of the references, not least because vital elements of the claims are not found therein. For example, Wenander does not teach the grid of the present invention. As claimed, the grid of the present invention comprises “a first plurality of members arranged in a first direction and a second plurality of similarly-shaped members arranged in a second direction, the second

plurality of members supported on the first plurality of member to form a three-dimensional lattice structure, the first direction different from the second direction.”

Examiner asserts that Wenander’s reference numeral **2** teaches the grid of the present invention. Examiner is respectfully requested to identify where in Wenander the claimed grid is taught. Wenander teaches that reference numeral **2** is a cover; in the figures it appears to be a flexible material of uniform aspect. Cover **2** of Wenander does not teach the present invention’s grid having distinct first and second plurality of members, nor does it teach members oriented in different directions, nor does it teach one set of members supporting a second set of members. Neither do either Wenander’s distance net **5** nor sheet **6** teach the grid of the present invention; neither have the claimed three-dimensional lattice structure. Net **5** of Wenander does not teach two pluralities of members arranged in different directions such that the first supports the second; sheet **6** is merely a flat cloth with holes cut in it. It could not even function as the claimed grid.

Creskoff also does not teach the grid of the present invention. Nowhere does Creskoff teach the three-dimensional lattice structure claimed, wherein a plurality of members are arranged in a first direction and a second plurality are arranged in a second direction, the first supporting the second. As such, neither Wenander nor Creskoff, in any combination with the remaining cited art (even were such a combination proper), makes obvious the present invention of claim 43.

Nor does, for example, Rountree teach the barbed nozzle of claim 44. The nozzle of Rountree teaches resilient flexible fingers extending outward from the exterior of a flexible tube for harvesting and processing cotton. Rountree, Fig 6 and p 2 ln 80-100. By contrast, the barbed nozzle of the present invention is fixed to a plate and penetrates sheeting. In other words, the barbs of Rountree are wholly different, and could not function within the context claimed.

Claims 45-47 depend from allowable claim 43, and are allowable for at least that reason.

Respectfully submitted,

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